UNREPORTABLE

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ FAO(OS) NO. 106 OF 2005 & CM No.13065/2006

% Date of Decision : 17th September, 2007.

M/S.RAAMRAJ KALA MANDIR & ANR. .... Appellants.

Through Mr. S.K. Mehra & Ms. Mamta Mehra, Advocates.

VERSUS

M/S.NAHATA LIMITED .... Respondent.

Through Mr. Pramod B. Agarwalal, Ms. Praveena Gautam, Dr.Manmohan Sharma & Mr. Raman Mishra, Advocates

Mr. Rajiv Nayyar, Sr. Advocate with Ms. Jasmine Damkewala & Ms. Seema Sunnd. Advocates for applicant-Star India (P) Ltd.

CORAM:

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J:

1. The appellant No. 1, M/s Raamraj Kala Mandir has filed the present appeal against the Order dated 7th February, 2005 granting injunction and restraining the appellant from telecasting the film “Ganga Jamuna Saraswati”.

2. The respondent-M/s Nahata Limited has filed a suit for recovery of Rs.1,62,46,215/- against the appellant No. 1 and M/s. Gemini Pictures Circuit (P) Ltd.-appellant No. 2. The respondent had also filed injunction application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code, for short) for restraining the appellant from telecasting and delivering prints of the feature film "Ganga Jamuna Saraswati", which application stands allowed by the impugned order.

3. It is an admitted case of the parties that an Agreement dated 15th May, 1986 was executed between the appellant No. 1 and the respondent, for finance to the extent of Rs. 75 lakhs, pursuant to which respondent had financed a sum of Rs. 56.25 lakhs to the appellant No. 1. This amount was to be repaid as per the covenants of the Agreement. Negative of the said film was deposited with appellant No.2. These were not to be handed over by the appellant No. 2 to the appellant No. 1 without the consent of the respondent or till the appellant No. 1 remained bound by the covenants of the said Agreement. Relevant clauses of the Agreement have been reproduced in the impugned Order. We may refer only to one Clause, namely, Clause 5 of the Agreement which reads as under :-

> "In consideration of the premises aforesaid as security for repayment of all the amounts due and payable hereunder the producers shall simultaneously with the execution hereof address a letter to the said Gemini Colour Laboratory or such other laboratory with whom negatives prints etc. of the said picture are deposited or to be deposited from time to time,

> irrevocably by authorizing it to hold the said negatives prints etc. in trust for an in the name and on behalf of the financiers. It will be further clarified in the said letter that the negatives are to be maintained in the name of the financiers only till such time that all the amounts that may become payable by the producers to the financiers in terms of this agreement are paid by the producers to the financiers in full and once the same are so paid to full whether the same has become due of not. (sic)"

(emphasis supplied)

4. In addition to this Agreement the appellant No.1 had vide letter dated 25th November, 1992 asked the appellant No.2 to transfer the negatives of the film "Ganga Jamuna Saraswati" to the name of the respondent. It was also stated in the letter that till they settle the dues of the respondent and obtain the release letter, the arrangement will continue. The letter, however, clarifies that the appellant no.1 would be however entitled to fulfill its existing obligations to the distributors in supplying the prints for the balance period till 23rd December, 1998. Thus there was partial eclipse on rights of the respondent in view of already existing obligations of the appellant No. 1, but restricted to supply of the prints to existing distributors for the period upto 23rd December, 1998. By another letter dated 27th November, 1992, the appellant No.2 confirmed that they have transferred the negatives of the above film in favour of the respondent and till accounts are settled and clearance is obtained, they shall follow the instructions of the respondent.

5. Learned Single Judge has also extensively dealt with the further

correspondence between the parties for preparation of Betacam Cassettes for telecasting of the feature film. For this purpose, request was made by the appellant No.1 to the respondent. By referring to the said correspondence, the learned Single Judge has concluded that the parties also understood the Agreement to mean and read that the appellant No. 1 could not negotiate television telecasting and satellite rights in the film "Ganga Jamuna Saraswati" and required permission and consent of the plaintiff-respondent as these rights vested with the plaintiff-respondent.

6. Learned counsel for the appellant No.1 submitted before us that the said letters have been misunderstood, misread and intention of the parties was different. He specifically drew our attention to the lines/contents of the letter dated 25th July, 1997 written by the appellant No. 1 to the respondent wherein it was stated that the appellant No. 1 had never stated in its earlier letters that the respondent had offered to purchase TV rights of the film. We may state here that under the Agreement the negatives of the film "Ganga Jamuna Saraswati" which were lying with the appellant No.2 were transferred to respondent who had right and authority to deal with the said negatives till the accounts are settled and a release letter is issued. The only exception carved out was supply of prints to the distributors, in view of the already existing agreements entered into between the appellant No.1 and the said distributors. Reading of the letter dated 25th July, 1997 shows that the negatives continued to remain with the respondent. The appellant No.1

wanted to telecast the film “Ganga Jamuna Saraswati” and for this purpose had sought permission from the respondent with the explicit understanding that the entire proceeds/consideration will be paid and deposited with the respondent.

7. Learned Single Judge has also rightly made reference to IA No. 894/2000 which was filed by the appellant. Prayer clause (b) to the said application reads as under:-

> “(b) T.V.Rights which is assigned by S. Raamanathan in the name of M/s.Nahata and Co. to be reassigned in the name of Mr.S. Raamanathan.”

8. In paragraph 6 of the said application, the appellant had stated that he had been trying very hard to negotiate T.V. and satellite rights of the said film to pay the balance amount to the respondent. The prayer clause (b) referred to above has been made in the light of the said averment. Alongwith the said application, the appellant had also filed letter dated 4th November, 1999 written between the counsel for the appellant no.1. The said letter specifically refers to the fact that T.V. rights have been assigned to the respondent and there is need to reassign the said rights to a third party. It is also stated that a letter from the respondent is required to prepare Betacam Cassettes which is essential for telecasting.

9. In view of the facts stated above, we do not think that the interim order dated 7th February, 2005 passed by the learned Single Judge

restraining the appellant from exhibiting/telecasting the film “Ganga Jamuna Saraswati” in cinema halls and through the medium of television and satellite requires any interferrence. To this extent, the interim order passed by the learned Single Judge is upheld. However it is clarrified that it will be open to appellant No. 1 or the respondent to move an appropriate application before the learned Single Judge for exhibiting/telecating or transfer of satellite right in respect of the film “Ganga Jamuna Saraswati” in case they have any concrete proposal with specific monetary consideration. On any such application being filed the same will be considered on merits and the Ld. Single Judge can also pass an order how and whether sale consideration should be appropriated to the respondent or deposited in the court. The direction is being given as the market value of the film is bound to come down with passage of time and this may not be in the interest of the parties.

10. Learned Single Judge has also noticed that the feature film “Ganga Jamuna Saraswati” had been telecast on 7th July, 2001 by the channel Star Plus. Star India Ltd was directed to deposit the sum payable to the appellant for telecasting of the said film in the Court. The said deposit has been made. It is stated that an application has been filed by Star India Ltd., which is pending consideration before the learned Single Judge. It will be open to the learned Single Judge to decide and dispose of the said application without in any manner being influenced by the observations made in the impugned Order or the interim order dated 21st August, 2006 passed by the Division

Bench.

11. The Appeal and the application are accordingly disposed of. However, in the facts and circumstances of the case there will be no order as to costs. It is also clarrified that the suit will be decided by the Ld. Single Judge without being influenced by any observation in order dated 7th Feburary, 2005 or this order. The above observations/findings have been recorded only for the purpose of disposal of the interim injunction application.

(SANJIV KHANNA)
JUDGE

(DR. MUKUNDAKAM SHARMA)
CHIEF JUSTICE

SEPTEMBER 17, 2007.
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